

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

ALLEN C. RAY,

Plaintiff,

v.

Case No. 3:11-cv-69-ST

OPINION AND ORDER

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

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SIMON, District Judge.

On March 20, 2012, Magistrate Judge Janice Stewart filed Findings and a Recommendation (“F & R”) that the Commissioner’s decision be reversed and remanded for an award of benefits to Plaintiff. (Doc. # 25). No objections to the F & R have been filed.

Under the Federal Magistrates Act, the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, “[t]here is no indication that Congress, in enacting [the Magistrates Act] intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Rule 72(b) of the Fed. R. Civ. P. recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.” No objections having been made, the court follows the recommendation of the Advisory Committee and reviews the F & R for clear error on the face of the record. No such error is apparent.

Accordingly, the court ADOPTS Judge Stewart's F & R (doc. # 25). The Commissioner's decision is REVERSED and the case is remanded for the payment of benefits.

IT IS SO ORDERED.

DATED this 7th day of May, 2012.



Michael H. Simon
United States District Judge